



## *Memorandum*

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*Development & Environmental Services  
Planning Division  
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**Date:** April 22, 2005

**To:** Members of the Planning Commission

**Via:** Tom William, Planning Secretary

**From:** Clifford Nguyen, Planner II

**Re:** April 28, 2005 Sandhu Residence (PLN2005-00058) Staff Report

Please note that the April 28, 2005 Sandhu Residence staff report is identical to the April 14, 2005 staff report for this project continued by the Planning Commission per the applicant's request, except for the following additions to the report:

1. Under "Background and Previous Actions" (pg. 3, para. 6), the Planning Commission's action to continue the project to April 28, 2005 is included; and,
2. Under "Analysis of Applicant's Justification, April 5, 2005 Letter" (pgs. 14-15, in its entirety), discussion is included on the "ridgelines" and "hilltops" issues raised by the applicant's attorney. The added discussion is similar to the Gold Sheet addendum provided on April 14, 2005.

**REPORT - PLANNING COMMISSION MEETING**  
**April 28, 2005**

**Project Name and Number:** Sandhu Residence (PLN2005-00058)

**Applicant:** Dr. Sukhwinder Sandhu

**Proposal:** To consider a Conditional Use Permit and Preliminary Grading Plan for the development and use of a 16,214 square foot single-family residence.

**Recommended Action:**

- A. Deny project as proposed at Location 1;
- B. Based on the available information, determine that alternative building site Location 2 and Location 3 are located in areas potentially impacted by safety constraints, and therefore are not appropriate for development;
- C. Based on available information, determine that due to encroachments into Location 5's building site from a seismic setback zone and a potential for earthquake induced landslides above the site, find that the remaining building area associated with Location 5 appears to be insufficient for development; and
- D. Pursuant to Section 3 [Protection of Legal Rights] of Measure T, direct applicant to explore the minimum permitted development of a single-family home with an aggregate floor area of not greater than 10,000 square feet at either: (1) the vicinity of Location 1A (north of the proposed Location 1, behind hilltop); or, (2) the vicinity of Location 4 (base of the foothill adjacent to riparian corridor).

**Location:** East King Avenue, Niles Planning Area

**Assessor Parcel Number(s):** 507-0124-027-02 and 507-0124-028-00

**Area:** 81 Acres or 3,528,360 square feet

**Owner:** Dr. Sukhwinder Sandhu

**Agent of Applicant:** Paul Kozachenko, Gonsalves & Kozachenko

**Consultant(s):** Bruno Marcelic, Architect, Bruno Marcelic Architect  
Velimir Sulic, Mason-Sulic Civil & Design Consultants, Inc.  
David W. Buckley, Geotechnical Engineer, Buckley Engineering Associates  
Gerald W. Sasse, Environmental Assessor, Aqua Science Engineers, Inc.  
Bob Petit, Photogrammetry, Aero-Geodetic Corporation  
Daniel Stephens, Environmental/Biological Consultant, H.T. Harvey & Associates  
Dr. R. Rexford Upp, Geotechnical Engineer, Upp Geotechnology, Inc.

**Environmental Review:** A Mitigated Negative Declaration has been prepared for this project.

**Existing General Plan:** Hill Face Open Space

**Existing Zoning:** O-S (R), [Hill Face] Open Space (Development Reserve Overlay)

**Existing Land Use:** Undeveloped

**Public Hearing Notice:** A total of 201 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Mission Boulevard, Alvarado Niles Road (Union City), King Court, and Meridian Circle (Union City). The notices to owners and occupants were mailed on April 1, 2005. In addition, one public hearing notice was mailed as a courtesy to an interested party. A Public Hearing Notice was delivered to The Argus on April 11, 2005 to be published by April 14, 2005.

**Executive Summary:** The proposed project is a Conditional Use Permit and Preliminary Grading Plan to allow the construction and use of a new 16,214 square foot residence, including a garage and an indoor pool area. The project also includes three 10,000 gallon water tanks and total grading of approximately 4,000 cubic yards on an 81-acre unimproved parcel within the Hill Area on East King Avenue at the applicant's proposed Location 1 shown on Exhibit "A" (enclosed). The applicant is proposing to build a single-family structure on the northeast section of the lot that would be built between the 360- and 380-foot elevations. Because a majority of this parcel is located above the Toe of the Hill line, any proposed development on this parcel is subject to the provisions of the Hill Area Initiative of 2002 (Measure T) and applicable hill area policies and regulations under which all development in the Hill Area must be evaluated.

Staff recommends that the Planning Commission deny the project as proposed at Location 1, as it is inconsistent with Measure T provisions, particularly as it proposes a building site that: is partially on a hilltop; breaks the visual plane of the hilltop; and has access over an area with a slope of 30% or more. In addition to being inconsistent with Measure T provisions, the proposed project is also inconsistent with General Plan objectives, goals and policies adopted for the hill area.

Due to safety constraints that limit the area available for development, the Planning Commission should find and direct the applicant to explore development of a residence within the vicinity of Location 1A (north of the proposed Location 1) or Location 4 (base of the foothill adjacent to the riparian corridor). Development at Location 1A or Location 4, where each site is in violation of one provision of Measure T than Location 1, which violates two provisions of Measure T, would be more consistent with Measure T and, therefore, under Section 3 [Protection of Legal Rights] may be considered a potential building site for the minimum development allowed under Measure T (e.g., a residence not exceeding a total aggregate of 10,000 square feet).

The Planning Commission "may permit only that minimum development required by law which is most consistent with the provisions and purposes [of Measure T] and that complies with other General Plan provisions" (Section 3 of Measure T). The applicant should thus be directed to explore the "minimum development" permitted for a single-family residence within the vicinity of either Location 1A or Location 4, not exceeding the minimum permitted development of a single-family residence with an aggregate floor area of 10,000 square feet.

**Background and Previous Actions:** The Hill Area Development Policy, which was originally adopted in 1964, has been applied to development in the hills of Fremont. In 1981, with the voter-adoption of the Hillside Initiative, Measure A, development in the Measure A defined Hill Area was further restricted by the inclusion of additional policies and regulations, which were subsequently incorporated in the City's General Plan and Zoning Ordinance. The policies set forth the project review procedure to be applied to development projects in the Measure A Hill Area. Projects were reviewed for conformity with the Hill Area's purpose and intent of preserving and enhancing the beauty of the City's Hill Area, while allowing for orderly and limited development.

On November 3, 2002, the voters adopted a new Hill Area protection initiative, the Hill Area Initiative of 2002, Measure T (enclosed—Informational 1). Measure T's adoption resulted in the addition of further development restrictions for property located above Measure T's defined Toe of the Hill (TOH) line. The Measure T initiative and the previous Measure A initiative both have the general intent of protecting the hills of Fremont from harmful and unnecessary development, while maintaining existing use of the hills for agriculture, outdoor recreation, very-low density residential, and open space.

The General Plan land use designation for the parcel is Hill Face Open Space, and the zoning is Open Space (Development Reserve Overlay). Any proposed residence in an Open Space zoning district requires the approval of a Conditional Use Permit (CUP) by the Planning Commission. (See Municipal Code §8-21711(c)(1).) The majority of the parcel is located above the Toe of the Hill line as defined by Measure T, including the applicant's proposed building site at Location 1. Therefore, the applicant's proposed project must comply with the regulations of Measure T, as well as the existing Hill Area Development Policies and the provisions of Measure A.

When the applicant previously submitted this project for consideration in May 2004, the Planning Commission approved the requested CUP for the development of the then proposed single-family residence at a building site in the same general area as the current proposed Location 1, as well as grading, landscaping and other associated improvements. In July 2004, the City Council granted a third party appeal that reversed the Planning Commission's approval of the project.

In August 2004, the applicant applied for a new Conditional Use Permit and Preliminary Grading Plan for a project similar to the May 2004 proposal. In February 2005, a peer review consultant conducted a peer review (Informational 2) of the applicant's Visual Analysis (included as Exhibit "B" in the Opportunities and Constraints Analysis) of the proposed project at Location 1 as seen from various public vantage points.

With this August 2004 application, the applicant submitted an Opportunities and Constraints Analysis (Exhibit "B") which reviewed the entire site for potential building areas, as well as constraints. Based on this analysis, staff initially recommended the applicant consider alternative Location 5. Based on information submitted by the applicant in February 2005, Location 5 appears to be constrained by a seismic fault trace and is downhill from an area that may be susceptible to an earthquake-induced landslide. While the information about Location 5 is not conclusive, staff concurs that Location 5 appears likely to be a site impacted by safety constraints and recommends that the Planning Commission find that the site is not suitable as a possible building site.

The project was originally scheduled for consideration on March 10, 2005. However, on February 25, 2005, the applicant submitted the additional information requested in November 2004, discussed above, regarding constraints at Location 5, and thus additional time was needed to evaluate this new information and consider staff's recommendation.

On April 14, 2005, at the applicant's request, the Planning Commission continued this project to April 28, 2005.

### **Project Description:**

#### Project Proposal

The project is a Conditional Use Permit (CUP) and Preliminary Grading Plan (PGP) to allow the construction and use of a new 16,214 square foot residence (includes garage, indoor pool area), three new 10,000 gallon water tanks, and the grading of approximately 4,000 cubic yards on an 81-acre unimproved lot within the Hill Area on East King Avenue at Location 1, located on the northeast section of the lot partially on a hilltop at the approximate elevation of 360 to 380 feet. The proposed project is located above the Toe of the Hill line as defined by Measure T. Access to Location 1 takes access over steep slopes. The proposal is summarized, as follows:

1. A new one-story 16,214 square foot residence at the approximate elevation of 360 to 380 feet consisting of five bedrooms, including master suite, 5-car attached garage, attached indoor pool and guesthouse, and associated hardscape (walkways and patios) resulting in 21,897 square feet of impervious surface area;
2. Associated grading proposed under the Preliminary Grading Plan application to allow approximately 4,000 cubic yards of total grading (2,000 cubic yards of cut and 2,000 cubic yards of fill) for the development of the building site;
3. A new 16-foot wide paved access road (with 2-foot gravel shoulders on each side) approximately 2,470 feet in length from the temporary cul-de-sac on East King Avenue to the proposed residence, resulting in 36,800 square feet of impervious surface area;
4. A fire engine turn-around outside of the main gate and inside the courtyard, resulting in 8,911 square feet of impervious surface area;
5. A landscape berm 2.5-feet in height with unspecified trees and shrubs proposed at the hilltop crest; and
6. Three 10,000-gallon water tanks proposed to be installed at the elevation of 410 feet.

While the exact location of the building site and roof profile of the residence has changed slightly from the May 2004 proposal, the overall proposed architectural style, massing and layout of the proposed residence is relatively similar to the previous proposal. The architect describes the proposed residence as "patterned after the old missions of California". The project as described by the project architect is a one-story structure where the main house, attached garage (via a covered breezeway), guesthouse quarters, and main gate are "laid out around a central courtyard much like the old missions were" (Informational 3). The roofing material consists of a clay barrel tile that is described as "rustic in texture". The windows consist of Anderson vinyl clad wood in a "Sandstone" grayish color, with faux stone window surrounds. The profile of the structure's roof has a long overhang with exposed timber rafters. The walls have a stone pattern which the project architect describes "is a mixture of dull beige, green and gray to reflect the different seasons in the hills". Additional elements, such as wood trellises with pre-cast concrete columns and courtyard fountains are proposed (see Color and Material Board, Exhibit "C").

Based on the plans presented, the applicant proposes a residence at the northeast section of the lot at the approximate elevation between 360- to 380-feet. The main portion of the house as measured from the existing natural grade is approximately 25 feet in height, with the west and east wings of the house (or left and right side of the house as viewed from Mission Boulevard) at approximately 20 to 21 feet in height, respectively. The layout of the proposed residence is similar to the May 2004 proposal, except that the house is situated approximately 29 feet further north and 25 feet further northeast away from the hilltop at the 380-foot elevation. The main floor of the residence is proposed at one level, with the west and east wings stepping down into the slightly lower area at the approximate 360-foot elevation. The highest structure proposed is the main gatehouse at 27.5 feet in height (or top of roof ridge at 391.5-foot elevation). Data provided by the applicant indicates that approximately 21,900 square feet of impervious surface area will result from the development of the main residence and approximately 41,900 square feet of impervious surface area will result from the proposed 16-foot paved driveway. Cumulatively, the amount of impervious surface area is approximately 63,800 square feet or 1.8% of the 81-acre lot. In addition, three 10,000-gallon water tanks, eight feet in height, are proposed at the 410-foot elevation to supplement water pressure for fire suppression and landscape irrigation.

#### Opportunities and Constraints Analysis

The City Council, at its July 2004 meeting, directed the applicant to work with City staff to analyze alternative building sites on the 81-acre parcel if a subsequent application was proposed. Based on that direction, the applicant submitted an "Opportunities and Constraints Analysis" (Exhibit "B"), which incorporates several map 'layers' showing which areas of the parcel can accommodate development. The analysis is prepared in the form of separate opportunities and constraint layers identifying various conditions of the parcel at alternative building locations: 1 (proposed), 1A, 2, 3 and 4. After receiving this information, the applicant was asked to evaluate an additional alternative building site, Location 5, which appeared to provide better development opportunity for a single-family residence. Based on the most recent information received, Location 5 is not currently recommended as a building site. These opportunity and constraints layers are incorporated into one cumulative Summary Site Analysis. The categories of analysis are described below:

1. Topographic (slope classification map) layer to depict the existing grades of the entire lot at 10-foot elevation contour intervals. In certain areas, elevation contours at a smaller interval are used to help determine slope constraints within the project lot.
2. A geologic hazard layer to depict potential geologic constraints (e.g., fault lines, landslides, slope instability, liquefaction).
3. An existing conditions layer showing all easements, roadways, utilities and structures.
4. A biological layer showing native landscaping and trees, riparian areas, watercourses, etc.
5. A visibility layer showing the entire lot, identifying all areas that can be seen from public places (e.g., public parks, trails and public buildings).
6. A site summary analysis showing all layers combined and plotted on one sheet.

The Opportunities and Constraints Analysis has been made part of Exhibit "B" (enclosed) and is analyzed under "Project Analysis" below.

### Photo Simulations and Story Poles

As development in the Hill Area has a potential for creating significant visual impacts from public places, the applicant was required to submit photo simulations of the project's visual implications. The applicant's architect prepared the photo simulations (Exhibit "C") of the proposed Location 1 building site, which were then peer reviewed by a City-selected consultant (see discussion under "Project Analysis" below). The photo simulations of the project includes photos taken from the following sites:

1. The intersection of Mission Boulevard and East King Avenue;
2. The Niles Boulevard/BART overpass;
3. Quarry Lakes; and
4. Alameda Creek Trail parking lot.

Story poles were also installed at the proposed building site, Location 1, to depict the elevations and silhouette of the proposed 16,214 square foot residence. The applicant also installed story poles at Location 5. According to the applicant, the story poles at Location 5 depict a one-story 10,000 square foot residence. Location 5 now appears insufficient for a building site for the reasons mentioned below. The story poles are intended to provide a visual aid for neighbors, staff, and the Planning Commission in its evaluation of the proposed project. The story poles will remain on the site until the project review process has concluded.

### **PROJECT ANALYSIS:**

**Evaluation of Opportunities and Constraints Analysis:** The purpose of the Opportunities and Constraints Analysis (Exhibit "B") is to identify and distinguish possible building sites on the parcel based on site-specific existing conditions (e.g., fault setback zone, unstable soil, easements, inundation, etc.). As the analysis identifies potential building sites, each potential building site is further analyzed for conformance with Measure T, Hill Area Development Policies, and Measure A. The three alternative building sites below were determined to be sites impacted by safety constraints due to the reasons listed.

#### **Sites Impacted by Safety Constraints**

- **Locations 2 and 3:** Locations 2 and 3 are located adjacent to or downhill of the existing Alameda County Water District (ACWD) reservoir. If the reservoir were to rupture, Locations 2 and 3 may be inundated by floodwaters. Location 2 is also within a setback zone established along a Hayward fault trace. Staff recommends that Locations 2 and 3 be eliminated as possible building sites (see Exhibit "B")
- **Location 5:** Location 5 is partially within a setback zone established along a Hayward Fault trace and downhill of an area that may be susceptible to an earthquake-induced landslide (see Informational 4)
- Location 5 is also partially constrained by existing conditions, which includes a fire access road. Although the information submitted is not conclusive, staff believes that any further geotechnical investigation of Location 5 would likely conclude that this area is susceptible to an earthquake-induced landslide. Location 5 is therefore not recommended as a building site.

The three remaining building sites are thus Location 1, Location 1A and Location 4, which are analyzed below for conformity with Measure T provisions and other Hill Area development regulations.

**Hill Area Initiative of 2002 (Measure T):** Staff's evaluation of the Opportunities and Constraints Analysis concluded that Locations 1, 1A and 4 are possible building sites. These three specific locations are further evaluated below for conformity with three specific provisions of Measure T. Other applicable provisions of Measure T, such as the visual safeguards provisions, may be addressed depending on the direction of the Planning Commission.

Building Site	Measure T Provisions		
	Prohibitions		Directive
	Riparian Corridors §8(a)— Would development be within 200 feet from the center of a streambed?	Steep Slopes (§8(c))—Would development have access over a slope of 30% or more?	Hilltops (§8(d))—Would development be on a hilltop, or project into the visual plane of a hilltop?
<b>Location 1</b> (proposed)	No	Yes	Yes
<b>Location 1A</b>	No	Yes	No
<b>Location 4</b>	Yes	No	No

Based on the above matrix, Location 1A or Location 4 have development potential for a single-family home more consistent with hill area policies and provisions.

Staff recommends that development at the proposed Location 1 be denied, as it would violate not only Measure T's steep slopes restriction (Sec. 8(c) – "...No building may be located on a site that has access over a slope of thirty percent (30%) or more. ...", (see Informational 5, Illustration – Access Over Steep Slopes), but also the hilltop restriction (Sec. 8(d) "Structures may not be located on ridgelines or hilltops, or where they will project into the visual plane of a ridgeline or hilltop, as viewed from public roads, trails, or other public places ...") (see Informational 6, Illustration - Development on Hilltops), and likely visual safeguard provisions.

Staff recommends that the project as proposed at Location 1 be denied and the applicant be directed to explore the development of a home within the vicinity of Location 1A or Location 4 as analyzed below. While development at either Location 1A or 4 would be inconsistent with restrictive provisions of Measure T, the 30% steep slopes and 200-foot riparian setback provisions, respectively, these two locations provide opportunity for better conformance with Measure T. Such development, however, may only be "that minimum development required by law which is most consistent with the provisions and purposes of this ordinance [Measure T]". The Planning Commission can consider only that "minimum development" at Location 1A or Location 4, which cannot exceed an aggregate floor area of 10,000 square feet, consistent with Section 10 (Maximum Floor Areas) of Measure T.

**Location 1A:** While development at Location 1A would be in violation of Measure T's steep slopes provision, Location 1A provides the opportunity for the development which is more consistent with Measure T and the General Plan than the applicant's proposed project at Location 1, which is in violation of two restrictive provisions of Measure T.

Development at Location 1A could proceed if the Planning Commission can conclude that, pursuant to Section 3 [Protection of Legal Rights] of Measure T, development at Location 1A, while inconsistent with the steep slopes provision, is less significant than the violation that would result in the development at Location 1 and Location 4 (subject to the riparian corridor setback provision), and that a project at Location 1A can be designed to minimize visual impacts at this location consistent with Measure T. Development at Location 1A, however, would result in a paved access road of approximately 2,470 feet in length. Under Section 3 [Protection of Legal Rights], because development at Location 1A would be in violation of the steep slopes prohibition in Measure T, if the Planning Commission chooses to direct the applicant to explore the possibility of development within the vicinity of this location, it may only permit that "minimum development" allowed: a single-family residence not exceeding an aggregate floor area of 10,000 square feet (the minimum floor area provided by Section 10), properly oriented and designed to minimize visual impacts from public places to the extent practicable.

**Location 4:** Development at Location 4 would be inconsistent with Measure T's prohibition of development within 200 feet from the center of a streambed (riparian corridor) (Section 8(a)). However, development at Location 4 could also be considered more consistent with Measure T than the applicant's proposal at Location 1, if the Planning Commission finds that the development of a single-family residence within the 200-foot riparian setback is less significant than the access over steep slope violation and locating structures on hilltops prohibition caused by development at Location 1. The easement encumbrance that partially affects a portion of the buildable area at Location 4 is minimal. Development at Location 4 would still be required "to the extent practicable ... minimize visibility from public places." Location 4 may conform more closely with Measure T's Purpose and Findings, set forth below (in *italics*):

- *"... to prevent urban sprawl to steep ... terrain ..."*
  - as development at Location 4 would not take access over or be located on a slope of 30% or more and would not be an extension of development at a much higher elevation than existing homes; and
- *"... support properly planned, compact development in and near existing urban development where infrastructure is available"*
  - as Location 4 is much closer to the existing terminus of East King Avenue, eliminating the need for a newly paved 2,470-foot road in the Hill Area, as only a much shorter extension of East King Avenue would be needed.

Development at Location 4, however, would be inconsistent with Measure T's prohibition on structures within 200 feet of the center of a riparian corridor, and thus only the minimum development is permitted. Measure T's required riparian setback of 200 feet is much greater than the setback required by biologists for other development along this same corridor. For example, other projects in this area were only required to setback from this same riparian corridor a distance of 25 to 75 feet. If the Planning Commission finds that the riparian provisions violation caused by development within the vicinity of Location 4 is less significant than the steep slopes violation and hilltops violations caused by development at Location 1, and the steep slopes violation caused by development within the vicinity of Location 1A, under Section 3 [Protection of Legal Rights], the Planning Commission should direct the applicant to explore the minimum permitted development of a single-family residence with an aggregate floor area of less than 10,000 square feet, which minimizes the visual impact from public places to the extent practicable, within the vicinity of Location 4.

**Protection of Legal Rights:** Section 3 of Measure T states:

"Notwithstanding their literal terms, the provisions of this ordinance [Measure T] do not apply to the extent that courts determine that if they were to applied they would deprive any person of constitutional or statutory rights or privileges, or otherwise would be contrary to the United States or State constitutions or law. The purpose of this limitation is to make certain that the ordinance does not infringe any person's constitutional or legal rights or violate the law in any way, or subject the City of Fremont to any legal liability. To the extent that a provision or provisions of this ordinance are not applicable because of this section, the City may permit only that minimum development required by law which is most consistent with the provisions and purposes of this ordinance, and that complies with other General Plan provisions."

As discussed above, development at the applicant's proposed Location 1 violates at least two provisions of Measure T, access across steep slopes and structures located on hilltops or which break the visual plane of a hilltop. In contrast, development on Location 1A only implicates the access across steep slopes prohibition, and development on Location 4 only violates the requirement to setback from riparian corridors. The Protection of Legal Rights provision of Measure T directs the City to only allow development "... which is most consistent with the provisions and purposes of this ordinance (Measure T)..."

Therefore, while the applicant may develop a single-family home on the applicant's parcel, the City is required to 'permit only that minimum development required by law which is most consistent with the provisions and purposes of [Measure T]'. Under Section 3 and Section 10 of Measure T, the applicant is only permitted the minimum development allowed, which is 10,000 square feet (cumulative floor area) if a single-family residence is proposed.



**Steep Slopes (§8(c)):** Measure T explicitly prohibits the development of a building on a site that has access over a slope of 30% or more. The provision reads:

Steep Slopes (§8(c)): Areas of Special Environmental Concerns—Further Safeguards

"No building site, in whole or in part, may be located on a slope of thirty percent (30%) or more. **No building may be located on a site that has access over a slope of thirty percent (30%) or more** [Emphasis added] ...".

Any development at Location 1 (applicant's proposed building site) or Location 1A would be in violation of this Measure T prohibition because both locations take access over a slope of 30% or more. Specifically, the proposed driveway to Location 1 or Location 1A would result in approximately 900 lineal feet of private road that takes access over a slope of 30% or more (see Exhibits "A" and "B"). Staff analyzed the topographic map provided by the applicant and determined that the proposed driveway was created in an area with average slopes of 35% slope, which exceeds Measure T's prohibition regarding access over steep slopes. (see Informational 5, Illustration – Access Over Steep Slopes) The average slope was estimated by calculating the slope over an average distance of 150 feet, using the elevation contours provide by the applicant.

If the Planning Commission finds that under the Protection of Legal Rights (Section 3) provision of Measure T, Location 1A provides a better opportunity to be more consistent with Measure T, then Location 1A can be considered. Development at Location 1A approved under Section 3 of Measure T would not allow the appellant to further use the access road for additional development on the 81-acre parcel.

While the existing graveled road, originally used for farm purposes, is listed as an access route available for the Fire Department, it is neither an approved public road nor an approved private road. At this time, staff cannot determine the visual implications of the proposed access road without more detailed information (e.g., information on the retaining wall treatment needed to support the improved road).

**Ridgelines and Hilltops (§8(d)):** Measure T also prohibits development on ridgelines and hilltops, unless there is no other building site on the parcel. The provision reads, in relevant part:

Ridgelines and Hilltops (§8(d)): Areas of Special Environmental Concerns—Further Safeguards

"Structures may not be located on ridgelines or hilltops, or where they will project into the visual plane of a ridgeline or hilltop, as viewed from public roads, trails, or other places, unless there is no other building site on the parcel ...".

The project proposed at Location 1 is partly on a hilltop, and that the development of the residence would project into the visual plane of the hilltop, in violation of Measure T. (see Informational 6, Illustration – Develop on Hilltops)

In contrast, development on Location 1A (if properly designed) or Location 4 would not violate this restriction against locating structures on hilltops or where development projects into the visual plane of the hilltop.

**Riparian Corridors §8(a):** Measure T provides a directive provision, based on expert analysis, that prohibits development within 200 feet from the center of a permanent or intermittent stream bed. The provision reads, in relevant part:

Riparian Corridors §8(a): Areas of Special Environmental Concerns—Further Safeguards

"... No development shall be located within a riparian corridor...'Riparian corridors' are the areas within 200 feet from the center of a permanent of intermittent stream bed."

Development at Location 4 would be inconsistent with this provision. However, for the reasons discussed above, development at Location 4 results in fewer violations of Measure T prohibitions and would be more in character with the surrounding area. Based on a peer reviewed riparian study conducted in July 1999 by H.T. Harvey & Assoc. for the single-family tract located on King Avenue, only a 75-foot setback was recommended for the riparian habitat along the upstream portion of the drainage, which abuts the Sandhu parcel on its south side. Therefore, there appears to be sufficient building area in the vicinity of Location 4 if development at Location 4 is permitted to setback from the riparian corridor the necessary distance to preserve that corridor.

**Evaluation of Photo Simulations and Story Poles:** The photo simulations prepared by the applicant's architect were peer reviewed by a City-selected consultant, Urban Advantage, to verify accuracy. The peer review concluded that the four photo simulations taken from key public vantage points (i.e., Quarry Lakes, Alameda Creek Trail, Niles Boulevard and BART overpass, and Mission Boulevard at East King) appeared to be accurate. The methodology used to prepare the peer review was based on a comparison of photographs taken of the story poles with the photo simulations provided by the applicant's architect. A letter submitted by a State-licensed surveyor confirmed that the story poles were correctly installed in accordance with the proposed residence at Location 1 (Informational 7).

**Design Analysis:** While staff finds that the most of the elements of the architectural design and materials of the proposed residence are appropriate for the Hill Area, it cannot be considered at the proposed Location 1 due to the violation of Measure T's provisions regarding access over Steep Slopes and development on Hilltops. If pursuant to Section 3 of Measure T [Protection of Legal Rights], the applicant proposes a similar project at Location 1A or 4, it should be noted that the sky light roof elements above the master bedroom would be reviewed to reduce potential daytime glare and nighttime glow. At any allowable location, a residence would have to be designed to minimize visibility from public places to the extent practicable, as well as step with a terraced roof system and floor plan that conforms with the natural grade of the hill rather than require extensive building pad grading.

**General Plan Conformance:** The existing General Plan land use designation for the project site is Hill Face Open Space. The proposed project at Location 1 is inconsistent with the existing General Plan land use designation for the project site because the project as proposed does not comply with the Land Use goals and policies adopted for the hill area.

Measure T, an ordinance adopted by Initiative, amended the General Plan. Section 5 of Measure T states, "Section 4 (c), 6 through 16, 19 and the description of the Hill Area in Section 4 (a) of this ordinance [Measure T] are additions to the General Plan. They shall be located in Chapter 3, Land Use, subject to the relocation or further relocation in the Plan, as deemed appropriate by administrators or officials". The following General Plan Goals, Objectives and Policies of the Land Use Chapter are applicable to the proposed project in terms of use and development:

**Policy 6.15 (Adopted by Initiative)**

The City shall perform architectural review for any development in the Hill Area in order to insure consistency with the policies of the General Plan. In addition, all development on the Ridgeline and Hill Face shall be subject to discretionary review and must be approved by the Planning Commission, or by the City Council on appeal.

Discussion: The project is before the Planning Commission for Site Plan and Architectural Approval as part of the Conditional Use Permit (CUP). Under the authority of Measure T, the Planning Commission is charged with evaluating the proposed project for conformity with the General Plan, which has been updated to include the policies adopted by Measure T. Staff has concluded that the project as proposed is inconsistent with these policies because the proposed project at Location 1 takes access across a steep slope of 30% or greater, and the proposed residence is located in part on a hilltop and the structure projects into the visual plane of the hilltop.

**Policy LU 6.18 (Adopted by Initiative)**

Consistent with the Hill Area Initiative of 2002, developments shall be designed to be compatible with their natural surroundings. Developments shall be designed to maximize retention of natural topographic features, such as drainage swales, slopes, rock outcroppings, vistas, landmark trees, natural foliage and plant formations...riparian areas and areas of natural beauty. Development shall minimize disturbance of any natural watercourse.

Discussion: Staff believes that the proposed building site at Location 1 is in violation of Measure T and thus would be inconsistent with this Policy. Location 1 cannot be designed to be in compliance with existing zoning and general plan designations because the proposed building site would have access over a slope of 30% or more, in violation of Section 8(c) of the Hill Area Initiative of 2002 standards and policies. The proposed project includes a long driveway, which for approximately 900 linear feet, crosses over a slope of 30% or more. In addition, the proposed home at Location 1 includes development partly on a hilltop, and the roofline of the home will extend beyond the visual plane of the hilltop. Because development on this site would be in violation of applicable Hill Area land use plan, policies and regulations, this site cannot be considered.

**Zoning Regulations:** The subject parcel is zoned O-S (R), [Hill Face] Open Space (Development Reserve Overlay). The project as proposed complies with respect to the height (maximum of 30 feet), front yard setback (minimum 50 feet), side yard setback (minimum 50 feet) rear yard setback (minimum 50 feet), and parking standards for the development of a single-family residence in this zoning district.

**Open Space:** While approximately 78.5 acres of the 81-acre site is now proposed to remain undeveloped in its present condition, allowing development at Location 1 by finding that the proposed access is in conformance with Measure T may result in the creation of additional development sites and homes on this 81-acre project parcel through subdivision into 4 parcels in conformance with Measure T (20-acre minimum lot size standard), all taking access from the proposed access road or extensions thereof. In addition, with fire access roads throughout the Hill Area, allowing access to new development could set a precedent which will open many parts of the Hill Area to development.

**Circulation/Access:** The private driveway for the project extends approximately 2,470 feet from the current temporary cul-de-sac of East King Avenue to Location 1. As mentioned above in the Measure T analysis section, approximately 900 feet of the existing gravel access crosses slopes that exceed thirty percent (30%). The access was recently (sometime after December 2003) repaired with a new layer of gravel. While the applicant has maintained that the existing roadbed has not recently been widened, staff believes there has been some non-permitted widening of the roadbed (see Grading discussion below).

**Fire Access Requirements:** The Fremont Fire Department reviewed the project and provided requirements related to access to the proposed building site. The requirements are based upon Section 902 of the California Fire Code (CFC). The requirements are as follows:

- A fire apparatus access road is required for the proposed development. The dimensions of the fire apparatus access road shall have an unobstructed width of not less than twenty feet (20') and an unobstructed vertical clearance of not less than thirteen feet six inches (13'-6"). CFC 902.2.2.1—Dimensions
- Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with an all weather driving surface. CFC 902.2.2.2—Surface
- As proposed, a sixteen-foot (16') paved apparatus access roadway with two-foot (2') gravel shoulders on both sides of the paved apparatus access roadway, for a total unobstructed width of not less than twenty feet (20'), is acceptable provided that the following conditions are met:
  1. The applicant demonstrates the gravel shoulders can withstand the imposed load of Fire Department apparatus (56,000 pounds).
  2. The applicant demonstrates that the gravel shoulders will provide an all weather driving surface and the applicant demonstrates how the gravel shoulders will be maintained.
- Should the applicant be unable to meet both conditions above (1 and 2), the fire apparatus access road must be constructed with vehicle turnout areas provided at intervals of five hundred feet (500'). The turnouts are needed to allow passenger and service vehicles to move out of the way of Fire Department vehicles responding to an emergency.

In order to meet the Fire Department requirements, significant reconstruction and grading of the existing gravel access will be needed. See "Access Construction Requirements" in the Grading Section below.

**Public Street Improvements:** The project site has frontage on East King Avenue right-of-way, however the street improvements for East King Avenue do not extend to the site boundary. In order to develop a home on the project site, the applicant must comply with the Street Right-of-Way and Improvement Ordinance. The project would be required to install public street improvements from the current temporary cul-de-sac bulb, into the project site, and terminate with a new cul-de-sac bulb. The plans provided by the applicant do not reflect the required improvements. Construction within the existing East King Avenue right-of-way requires an encroachment permit, subject to review and approval by the City Engineer.

**Grading:** The project site is located on an 81-acre parcel, which surrounds an existing ACWD reservoir and is bisected by a PG&E parcel containing transmission towers and overhead power lines. The site is moderately steep with ground slopes that vary from less than twenty percent (20%) to greater than thirty percent (30%). Existing ground elevations vary from approximately seventy feet (70') behind the homes on King Court, to approximately seven hundred fifty feet (750') at the westernmost corner of the parcel.

**Access Grading:** The project plans incorrectly show an existing roadbed width greater than twenty feet (see 20'+ on Exhibit "A", sheets 3 and 4). On February 22, 2005, staff visited the project site with the applicant's consultant. The purpose of the visit was to inspect the existing gravel access and measure the roadbed width. During the visit staff measured existing access widths less than twenty feet for approximately 150 linear feet, between the 275 foot and 290 foot elevation contours. Additionally, the existing access had little to no gravel from the switchback (approximately the 370-foot contour) to the proposed residence (see Informational 8, Staff Photo 1).

During the visit staff noted apparent grading along the gravel access in several places. It appears that the access was widened in some areas, perhaps when a new layer of gravel was spread. The grading is visible as slumping soil and grass (see Informational 8, Staff Photos 2 & 3) and is visible as "fresh" sandstone vertical cuts versus weathered stone along the edge of the access (see Informational 8, Staff Photos 4 & 5). Mechanical scrape marks could also be seen in the "fresh" sandstone (see Informational 8, Staff Photos 6 & 7).

**Access Construction Requirements:** The project civil engineer has indicated on the Grading & Drainage Plan (Exhibit "A", sheet 3) that "No grading except for fine grading" is required prior to placement of new base rock (gravel) and asphalt. However, the grading plan does not demonstrate compliance with the recommendations of the project geotechnical engineer or the access requirements of the Fremont Fire Department.

The project geotechnical report (Buckley, 2003) recommends, "During the grading for the driveway, the fill on the downslope side of the existing road should be removed and re-worked. The soil should be placed in an equipment width base key, 2 feet deep on the downhill side." This recommendation is based upon the observation of the geotechnical engineer that construction of the existing access included approximately two feet (2') of fill. This fill is loose and is the reason the geotechnical engineer is recommending it be "removed and re-worked", which involves excavation, placement, and compaction.

The geotechnical report also recommends that "permanent cut and fill slopes should be no greater than 2:1 (horizontal to vertical). Steeper slopes should be supported by engineered retaining walls." During the site visit staff noted that along the proposed access, there is at least one hundred fifty feet (150') of roadway cut slopes that are steeper than 2 to 1. In many instances the cut is almost vertical (see Staff Photos 2 & 8). The preliminary grading plan does not show any of the project geotechnical engineer's recommended retaining walls along the roadway.

In addition to the geotechnical recommendations, the Fire Department requires certain standards of access be met to facilitate emergency response. The Fire Department requirements, listed above, include structural loading requirements and access width requirements. During the site visit, staff measured the existing roadbed width and the width is not equal to or greater than twenty feet along the entire driveway. In order to construct the driveway to meet safety and emergency vehicle response requirements, the accessway may require widening and/or the construction of vehicle turnouts at intervals along the accessway.

To conform to the project geotechnical engineer's recommendations and the Fremont Fire Department requirements, the existing gravel access will have to be substantially improved. This requires grading, roadway construction, and retaining wall construction, which would result in further encroachment into slopes exceeding 30%, as well as potential increase in visual impacts from potential retaining walls built along the uphill side of the roadway.

**Location 1 Grading:** The proposed grading for the project site at Location 1 is extensive and consists of cutting building pads into the existing ground, grading for the new driveway extension and turnouts, grading for a small landslide repair on the existing driveway, and creating a flat pad for the three proposed water storage tanks. The majority of grading will be excavation for building pads for the main residence and garage. The project civil engineer has estimated grading quantities of 1,993 cubic yards of cut and 559 cubic yards of fill. However a note has been added stating that the

remaining 1,434 cubic yards of "Overcut to be spread on site" south of the ACWD reservoir (in the vicinity of Location 2). Staff recommends against placement of fill in this area, unless further geotechnical studies are completed in this area.

The project proposes to "sink" the main residence into the ground up to six feet (6'). "Sinking" the residence, in conjunction with the proposal to have a wraparound patio, requires the installation of retaining walls around the patio. On the south side of the house the patio is three feet below grade, however on the west side of the house, outside the master bedroom, the patio is 5 feet above existing grade. The resulting retaining wall height does not conform to the three-foot height limit within the hill area development policies. The garage pad requires cuts of up to eight feet (8') to accommodate the lower level parking, whereas four feet (4') of fill is required at the upper level access from the motor court

A proposed covered walkway between the southeast corner of the main residence and the upper floor of the garage requires fill that exceeds six feet (6'). Cut and fill within the motor court varies between four feet (4') of cut and three feet (3') of fill. The existing ground slope across the motor court (from south to north) is approximately eleven percent (11%) and the proposed slope is five percent (5%). Cut and fill in excess of three feet (3'), outside of the building envelope, is inconsistent with policies for development within the Hill Area.

The balance of cut and fill on site would result in total grading of approximately 4,000 cubic yards. Because estimated grading exceeds 1,000 cubic yards, a preliminary grading plan has been submitted for Planning Commission review.

**ENVIRONMENTAL ANALYSIS:** An Initial Study and Draft Mitigated Negative Declaration have been prepared for the applicant's proposed project building site, Location 1, as shown on Exhibit "A" and "B". The environmental document also generally discusses the impacts of proposed development on a previously staff-proposed alternative building site at a lower elevation, Location 5, which, based on the information recently submitted, staff now recommends the Planning Commission find to be insufficient for development. The environmental analysis identified concerns regarding potential impacts to aesthetics, geology and soils, hydrology/water quality, noise, air quality, land use/planning and population/housing. The Draft Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to less than significant levels. A more detailed description of the potential impacts is provided within the Initial Study for the project, which is included as an enclosure.

With the incorporation of the mitigation measures identified in the Draft Mitigated Negative Declaration, development of a single-family home on this parcel would not have a significant effect on the environment based upon the implementation of the identified mitigation measures. Accordingly, a Draft Mitigated Negative Declaration has been prepared for consideration by the Planning Commission.

The initial study conducted for the project has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the development of a single-family home on this 81-acre parcel, as mitigated, would have any potential for adverse effect on wildlife resources.

**PUBLIC CORRESPONDENCE:** Any correspondence received will be forwarded to the Planning Commission.

**APPLICANT'S PROJECT JUSTIFICATION:** In the August 2004 letter (Informational 9), the applicant states that the recommended sites were evaluated "in terms of visibility from various public places (as discussed in the July 2004 City Council hearing) and from a geologic/environmental standpoint", and that the studies "concluded that Location 1...is the best location [for development of the residence]". The applicant further describes that Location 1 is the "least visible from the nearby prominent public places and does not have any geological/environmental hazards", and that the residence "is not on a hilltop" but "sited on the saddle between two knolls". The applicant letter concludes, "To the extent practicable, the revised project is in compliance with Measure T and is consistent with the direction of the City Council and staff." Attached to the letter are matrixes showing various constraints in support of the applicant's proposal.

In addition to the above, the applicant has requested that certain letters submitted for the previous Planning Commission and City Council meetings in 2004 be included as part of the project justification. These include letters from the applicant's counsel dated April 9, 2004, July 6, 2004, February 28, 2005 and April 5, 2005 (Informational 10).

## ANALYSIS OF APPLICANT'S JUSTIFICATION:

April 9, 2004 Letter. The applicant's counsel's April 9, 2004 letter advocates three positions with regard to Measure T's prohibition regarding access across slopes of 30% or more: (1) the prohibition on access across steep slopes conflicts with Measure T's provisions regarding minimizing visibility; (2) the prohibition should not apply to the applicant's existing farm access road proposed to access the new home; and (3) the slope of this access road is not 30% or greater.

With regard to (1), the City is charged with considering the plain meaning of the language of the initiative. Section 8(c) Steep Slopes, states in relevant part that "...**No building may** be located on a site that has **access over a slope of thirty percent** (30%) or more." (Emphasis added.) "No building may" is reasonably interpreted to mean an absolute prohibition. Meanwhile, Section 12 Visual Impacts, subsection (b) provides "**To the extent practicable**, structure shall be located, ... on that part of a parcel ...that **minimizes visibility from public places** ...". (Emphasis added.) The language "to the extent practicable" is directive, and not a strict prohibition. Therefore, the plain meaning of the language of the Initiative has Section 8(c) Steep Slopes taking precedence over Section 12 Visual Impacts. This is not a conflict, but a clear hierarchy directing which provisions of Measure T take precedence.

With regard to (2), prohibition on access across steep slopes application to existing farm access, Measure T defines development to include "...grading, excavation or fill of land." In order to have the existing farm access made safe for residential use, pavement will need to be placed on the road surface, storm drain systems installed, and possible retaining walls and other improvements needed to support the weight of fire apparatus and other vehicles. This is considered "development" pursuant to Measure T's definition, and the proposed access road is located partly in constrained areas where development is not permitted. In addition, while the applicant's consultants have represented this existing farm access as meeting City requirements and needing only paving, staff's recent site work determined otherwise. In its current condition, the farm access is not wide enough, would need grading in restricted areas, and also appears to have been widened without City permits.

With regard to (3), staff's analysis of the topographic map for the parcel indicates that the proposed access road crosses an area with an average slope of 35%. It has been staff's recommendation that the slope of the roadbed not be used to determine if a slope of 30% or more is present, but rather the area being crossed, unless it is an approved public street or accepted private road, which the applicant's proposed access is not.

July 6, 2004 Letter. The applicant's counsel's July 6, 2004 letter does raise a few new issues, and also repeats items from its April 9, 2004 letter. Particular new issues include: (A) project is very-low density of one home on 81 acres; and (B) the project minimizes visibility as required by Measure T. (Issues related specifically to the appeal are not analyzed here.)

With regard to (A), the applicant is currently proposing one home on an 81-acre parcel, which is very low density. However, the applicant has not offered a permanent covenant or restriction on his property; so theoretically, the applicant could return with an proposal to further subdivide the 81-acre parcel into four 20-acre parcels, which would meet Measure T's minimum new parcel size requirements.

With regard to (B), the project considered in 2004 did utilize design, materials and landscaping to address the requirement to minimize visibility. As noted above, staff supports many of these design, materials, and landscaping elements in the current house proposal, but not at the applicant's proposed Location 1 due to that site's other constraints.

February 28, 2005 letter. The applicant's counsel argues that "Measure T should be interpreted to forbid construction of new roads over slopes in excess of 30% and not necessarily to forbid additional use of existing roads." However, in this particular situation the scope of the work needed to ensure this former farm access meets the Fire Department's life / safety standards and the California Fire Code requirements exceeds 'additional use of existing roads'. This farm access was never intended or designed to serve a residence. As noted above, a staff site visit discovered that non-permitted grading and widening have taken place on the entry road in an attempt to create the Fire Department's requirement for 20' clearance. The applicant needs to undertake significant earthwork to stabilize the road (as recommended by the applicant's own geotechnical engineer). The applicant has not demonstrated how the road surface will meet the Fire Department's requirements - which may result in the need for turn-outs at every 500' that would be significant additional

grading / development into the steep slopes of the hillside; and the applicant has not provided information about the design, location and construction of retaining walls along the road which will be needed to stabilize the road surface.

The City Council's action in July 2004 (granting the third-party appeal and denying the applicant's original Conditional Use Permit) specifically did not address the issue of crossing a steep slope of 30% or more. Thus, this issue remains open for discussion and decision by the Planning Commission.

Applicant's counsel next argues that Measure T's minimum 10,000 s.f. floor area is not applicable to the proposed 16,000 + s.f. residence. Staff's recommendation, as outlined in the report, is that Section 3 (Protection of Legal Rights) only allows the City to "permit only that minimum development required by law which is most consistent with the provisions and purposes of this ordinance [Measure T]", and Measure T Section 10 specifically provides that "for any parcel a minimum of 10,000 square feet [of floor area] shall be permitted." While the applicant's counsel further advocates for the City to allow the 16,000+ s.f. residence for the 81-acre site, the applicant has not agreed to place an open space easement or restrictive covenant on the applicant's 81-acre parcel, thus the applicant is preserving opportunities for further development and subdivision, which might increase the total floor area on the 81-acre site beyond the one proposed 16,000+ s.f. residence.

April 5, 2005 Letter. The applicant's attorney raises two issues in the April 5, 2005 letter to the Planning Commission. This is to clarify and provide background for those two issues relating to the definitions of ridgelines and hilltops in Section 8 (d) of Measure T.

#### Ridgelines:

The applicant's attorney argues that the Measure A definition of ridgeline should not be altered or amended for Measure T. It is staff's contention that if the initiative actually intended to maintain the Measure A definition, as alleged by the applicant's counsel, the Measure T language would have been identical to that in Measure A. But, because Measure T changed the wording to the plural, "ridgelines" (emphasis added), staff concludes that the language was intentional and more than one ridgeline was intended by Measure T. The plural interpretation of "ridgelines" is consistent with both the plain meaning of the language, and also avoids making words surplusage, which are principles which guide interpretation of an initiative. Consequently, staff drafted, and the Planning Commission recommended that the Council adopt, the following definition for the Measure T term "ridgelines".

*"Ridgeline, other" shall mean one of the other ridgelines above the Toe of the Hill. These include the prominent ridgelines located easterly of the main ridgeline as viewed from public places as well as those tributary or branch ridgelines of both the main ridgeline and the other prominent ridgelines.*

#### Hilltops:

Similarly, Measure T introduced a term that was not included in Measure A: hilltops. The applicant's attorney asserts that Measure T did not intend to add or change the Measure A definition of ridgeline that had been included in the Fremont Municipal Code (Section 8-2185.8), but rather reflect the "possibility that an observer who looks at (for example) Mission Peak from one and one-half miles away might say that he or she is not seeing a "ridge" at that point, but a hill."

Staff again recommends that if Measure T intended to retain only the Measure A terminology, Measure T would not have added the new word "Hilltops" to describe "Areas of Special Environmental Concern – Further Safeguards" (Section 8). Therefore, staff proposed an alternative definition of "Hilltops" to the Planning Commission in July 2004, along with an alternative supported by the applicant and his attorney. Staff believes that the proposed definition for "Hilltops" below is consistent with the plain meaning intended by the voter-adoption of Measure T, which the Planning Commission considered and then recommended the City Council adopt.

*"Hilltops" shall mean prominent locations, which are noticeably higher in elevation than the immediately surrounding terrain. Hilltops may occur on or along a ridgeline but also may occur above or below a ridgeline in the form of knolls, rounded hills, and the top or peak of a hill."*

The City Council was presented this recommendation in a Work Session on December 14, 2004, and directed staff to come back to the Council with the full package of changes incorporated into an ordinance. This ordinance will be drafted after the City Council considers the Toe of the Hill line and other implementation policies associated with Measure T.

While the applicant's counsel argues that Location 1 "is the only site where his [the applicant's] proposed house can be built", the report indicates that Location 1A and Location 4 each provide the applicant with building sites which will accommodate a single family residence which is more consistent with Measure T.

**CONCLUSION:** The project as proposed at Location 1 would violate Measure T's prohibitions on: (1) access across Steep Slopes; and, (2) prohibition against development on Hilltops and where structures project into the visual plane of a hilltop.

If the Planning Commission finds that the proposed access road does not violate Measure T's steep slope provision and the applicant is permitted to develop at the proposed Location 1, it could allow this 81-acre project parcel to potentially further subdivide into 4 parcels in conformance with Measure T (20-acre minimum lot size standard) and all take access from the proposed access road or extensions thereof. This could be considered inconsistent with the main intent and purpose of Measure T and the General Plan by opening up further development of the hills of Fremont.

Staff recommends that the Planning Commission deny the proposed project at Location 1; but pursuant to Section 3 of Measure T [Protection of Legal Rights], direct the applicant to evaluate the minimum development of a single-family residence, not exceeding an aggregate 10,000 square feet, at either Location 4 (finding that the development would be inconsistent with the prohibition on development near riparian corridors) or Location 1A (finding that the access road violates the access over steep slopes prohibition) as the development at these locations would be more consistent with Measure T and Hill Area policies and provisions.

**ENCLOSURES:** Exhibit "A" (Site Plan, Preliminary Grading Plan, Floor Plan, Architectural Elevation and Sections)  
Exhibit "B" (Opportunities and Constraints Analysis)  
Exhibit "C" (Color and Material Board)  
Initial Study, Draft Mitigated Negative Declaration

Informational 1	(Hill Area Initiative of 2002, Measure T)
Informational 2	(UrbanAdvantage Peer Review of Applicant's Visual Analysis)
Informational 3	(Architect's Design Statement)
Informational 4	(Upp Geotechnology, February 2005 Letter)
Informational 5	(Staff Illustration—Access Over Steep Slopes)
Informational 6	(Staff Illustration—Development On Hilltops)
Informational 7	(Surveyor's Verification of Story Pole Installation)
Informational 8	(Staff Photographs From February 22, 2005 Field Visit)
Informational 9	(Applicant's August 2004 Letter)
Informational 10	(Applicant's Additional Enclosures, including April 2004, July 2004, February 2005 and April 2005 Counsel Letters)

**EXHIBITS:** Exhibit "A" (Site Plan, Preliminary Grading Plan, Floor Plan, Architectural Elevation and Sections)  
Exhibit "B" (Opportunities and Constraints Analysis)  
Exhibit "C" (Color and Material Board)  
Initial Study, Draft Mitigated Negative Declaration

**Recommended Actions:**

1. Hold public hearing.



2. Find that the proposed project at Location 1 violates the relevant provisions contained in the City's General Plan, specifically the Measure T prohibitions regarding building access across steep slopes and locating structures on hilltops and where structures project into the visual plane of a hilltop. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report.
3. Deny PLN2005-00058 (Conditional Use Permit and Preliminary Grading Plan), as shown on Exhibit "A".
4. Pursuant to Section 3 [Protection of Legal Rights] of Measure T, direct applicant to explore the minimum permitted development of a single-family residence, not exceeding an aggregate 10,000 square feet, at either the vicinity of Location 1A (north of the proposed Location 1, behind hilltop) or the vicinity of Location 4 (base of foothill adjacent to riparian corridor) as shown on Exhibit "B".

**Site Map of 81-acre Project Parcel  
(Site Zoning: O-S (R); Site General Plan: Hill Face Open Space)**

